

# ETHICS IN THE PUBLIC SECTOR – CLEARLY IMPORTANT, BUT...

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## Full Title:

**ETHICS IN THE PUBLIC SECTOR  
- CLEARLY IMPORTANT, BUT  
SOME PEOPLE ARE JUST PLAIN  
BASTARDS!**

# 'Not unethical' or 'ethically neutral' conduct:

- automatic behaviour
- unthinking behaviour
- lack of opportunity
- likelihood of detection
- ignorance
- complexity

# Unintentional unethical conduct:

- moral negligence
- moral blindness
- moral recklessness

# Categories of conduct:

- intentional ethical conduct
- ethically neutral conduct
- unintentional unethical conduct
- intentional unethical conduct

# The appropriate focus from an implementation and enforcement perspective:

- on outcomes rather than causes
- where cause or motive is important:
  - on questions of ‘judgement’ generally, rather than ‘ethics’
  - on whether conduct criminal, illegal, corrupt, or inappropriate, rather than ‘unethical

# Different perspectives on the importance of ethics:

- personal
- community
- government
- enforcement

# Factors influencing the likelihood of ethical conduct:

- personal values
- personal traits
- supports
- deterrents
- opportunities

# Mechanisms, strategies and approaches to encourage ethical conduct:

1. standard setting
2. expectation setting
3. prevention
4. enforcement
5. deterrence

# Mechanisms, strategies and approaches to encourage ethical conduct:

## Standard setting:

- offence provisions
- legal obligations
- legislated statements of values and standards of behaviour
- jurisdiction-wide code of conduct
- agency codes of conduct
- ethics training
- responsible agency

# Mechanisms, strategies and approaches to encourage ethical conduct

## Expectation setting:

- agency statements of values
- leadership ('tone at the top')
- duty statements / contracts of employment
- oaths of office
- ethics training

# Mechanisms, strategies and approaches to encourage ethical conduct

## Prevention:

- disclosure of interests
- gifts and benefits registers
- fraud control plans
- use of IT and communication devices policies
- accounting standards
- records management legislation/policies
- merit based selection
- criminal records checks
- supervision
- ethics training

# Mechanisms, strategies and approaches to encourage ethical conduct

## Enforcement:

- whistleblowing legislation
- internal disclosure policies
- reporting of corrupt conduct
- internal and external audit
- agency investigative capacity
- FOI
- records management legislation/policies
- merit review of decisions

# Mechanisms, strategies and approaches to encourage ethical conduct

## Deterrence:

- watchdog / integrity bodies
- internal and external audit
- penalties
- disciplinary action
- criminal action

<b>Category of conduct</b>	<b>Most effective mechanisms to encourage or enforce good conduct</b>
1) Intentional ethical conduct	Standard setting Expectation setting
2) Ethically neutral conduct	Standard setting Expectation setting Prevention procedures and practices Deterrence mechanisms
3) Unintentional unethical conduct	Standard setting Expectation setting Prevention procedures and practices Enforcement mechanisms Deterrence mechanisms
4) Intentional unethical conduct	Enforcement mechanisms Deterrence mechanisms

# Legislative statements of values and standards of behaviour

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Statements of values/ principles:</b>	s.6	s.10(1)	-	cl.2(c)?	-	s.4(1)(d), 6(b)	s.7(1)(d)	s.8(1)(c)	-
• accountability:									
-to government	s.6(c)	s.10(1)(e)	-	-	-	-	s.7(1)(d)	-	-
-to Parliament	-	s.10(1)(e)	-	-	-	-	s.7(1)(d)	-	-
-to public	-	s.10(1)(e)	-	-	-	-	s.7(1)(d)	-	-
• service to the public	ss.6(a), 7(a)	s.10(1)(g)?	-	cl.2(a)	ss.23(b), 25, PS Act	s.4(1)(a),(e)	-	ss.3(b), 8(1)(d)	s.7(a)
• responsiveness to: -requirements of gov't	s.6(b)(i)	-	-	-	s.23(a), PS Act	-	-	-	s.7(b)
-needs of public	s.6(b)(ii)	-	-	-	s.23(a), PS Act	-	-	-	-
• fairness and integrity	ss.6(d), 7(b)	s.10(1)(g)	-	cl.4(a),(e)	ss.4(2), 9, PSE Act	-	-	ss.3(d), 8(1)(b)	s.9(a), (b)
• efficiency and effectiveness	ss.6(e), 7(d)	s.10(1)(g)	-	cl.4(c)	s.23(a), PS Act	s.4(1)(a)	-	s.3(c)	s.7(e), (f)
• impartiality	-	s.10(1)(a)	-	cl.2(b), 4(a)	s.23(d), PS Act	-	s.7(1)(a),(f)	s.8(1)(a)	-
• highest ethical standards	-	s.10(1)(d)	-	-	-	-	s.7(1)(a)	s.3(d)	-
• respect for law and system of government	-	-	-	-	ss.4(2),7, PSE Act	-	-	-	-

## Legislative statements of values and standards of behaviour

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Standard of behaviour:</b>									
• integrity/probity	s.9(c)	s.13(1)	-	cl.4(a)	s.9 PSE Act, s.25(f), PS Act	-	ss.7(1)(a), 9(1),(14)	s.8(1)(b)	-
• honesty	-	s.13(1)	-	-	-	ss.6E, 6K, 6P, 6T, 6Z, 6ZC	ss.7(1)(e), 9(1)	-	-
• respect for persons/without harassment	s.9(f)	s.13(3)	-	s.49(g)	s.8, PSE Act	s.6(a)	s.9(3)	-	-
<b>Standard of decision-making:</b>									
• fairness/equity	ss.6(d), 7(b)	s.10(1)(g)	-	cl.4(e)	-	-	s.7(1)(f)	-	-
• impartiality	s.9(b)	s.10(1)(a),(g)	-	cc1.2(b),4(a)	ss.23(d), 25(f), PS Act, s.7(b), PSE Act	-	s.7(1)(a),(f)	s.8(1)(a)	-
<b>Standard of advice:</b>									
• honest/with integrity	-	ss.10(1)(f),13(1)	-	cl.4(b)	s.23(d), PS Act	ss.6E, 6K, 6P, 6T, 6Z, 6ZC	ss.7(1)(e), 9(1)	-	-
• rank	-	s.10(1)(f)	-	-	-	-	s.7(1)(e)	-	-
• objective/impartial	-	-	-	cl.2(b)	ss.23(d), 25(d), PS Act	-	s.9(10)	-	-
• accurate/not false or misleading	-	ss.13(9), 10(1)(f)	-	s.49(m)	-	-	ss.7(1)(e), 9(10)	-	-
• comprehensive	-	s.10(1)(f)	-	-	-	-	s.7(1)(e)	-	-
• timely	-	s.10(1)(f)	-	-	-	-	s.7(1)(e)	-	-

## Legislative statements of values and standards of behaviour

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Standard of performance:</b>									
• care/skill/diligence	s.9(a)	s.13(2)	-	cl.4(a)	s.10, PSE Act	s.6D(1)	s.9(2)	-	-
• professionalism	-	s.10(1)(a)	-	cl.4(a)	-	-	s.7(1)(a)	-	-
• effectiveness	s.6(e)	s.10(1)(g)	-	-	s.23(a), PS Act	s.4(1)(a)	-	-	s.7(e),(f)
• economy and efficiency	s.6(e)	-	-	cl.4(c)	s.11, PSE Act, ss.23(a),(h), 25(b), PS Act	s.4(1)(d), 6(b)	-	s.3(c)	s.7(e),(f)
• without excessive formality	-	-	-	cl.2(d)	s.23(f), PS Act	s.4(1)(b)	-	-	s.7(c)
• with minimum delay	-	-	-	cl.2(d)	s.23(f), PS Act	-	-	-	s.7(c)
<b>Standard of service:</b>									
• service quality	ss.6(a), 7(a)	-	-	cl.2(a)	ss.23(b), 25(a), PS Act	s.4(1)(a),(e)	-	s.3(b)	s.7(a)
• courtesy/sensitivity	s.9(d)	ss.10(1)(g), 13(3)	-	cl.4(e)	-	s.6(a)	-	-	s.9(c)
• responsiveness to needs	s.6(b)	-	-	-	s.8(2), PSE Act, s.23(a), PS Act	s.4(1)(a)	-	s.8(1)(d)	-
• assistance to understand entitlements	s.9(e)	-	-	-	-	-	-	-	-

## Legislative statements of values and standards of behaviour

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Obligation to comply/uphold:</b>									
• the law	s.9(h)	s.13(4)	-	-	s.7(1)(a), PSE Act s.25(g), PS Act	s.6(f)	s.9(4)	-	s.9(a)
• lawful and reasonable directions	s.9(i)	s.13(5)	-	s.49(c)	-	s.57(a)(ii)	s.9(6)	-	-
• code of conduct	ss.9(h), 251(2)(i)	s.14, cl.2.2	-	s.16(2)(c)	ss.18, PSE Act	s.6(ea)	ss.9(15),10	s.39(3)	ss.9(a), 21(1)(b)
• standards of conduct:									
- CEO	s.9(h)	ss.12, 14	-	ss.16, 23, cl.2	ss.25,51,52, PA Act	s.37	s.8	ss.8,13, 39(3)	ss.9,30,32
- SES	s.9(h)	ss.14, 35 (2)(c)	-	s.16, cl.2	s.25, PS Act	s.6	s.9 (15)	ss.8, 39(3)	s.9
-employees	s.9(h)	ss.13(11), 29(3)(g)	-	s.16, cl.2	s.10(b), PSE Act, s.25, PS Act	s.6	s.9(15)	ss.8, 39(3)	ss.9, 21(1)(b)
• recordkeeping standards	-	-	-	-	ss.23(i), 51(1)(g) PS Act	-	-	-	s.7(h)
<b>Obligation to report:</b>									
• conflict of interests	s.9(j)	s.13(7)	-	cl.4(b)	-	ss.6H,6Q,6W , 6ZA,6ZD, cl.5(1)	s.9(8)	-	-
• corruption/fraud	s.9(q)(i)	-	s.11, ICAC Act	-	s.9(2)(c), PSE Act	-	-	-	-
• maladministration	s.9(q)(ii)	-	-	-	s.9(2)(c), PSE Act	-	-	-	-
• waste	-	-	-	-	-	-	-	-	-

## Legislative statements of values and standards of behaviour

	ACT	CTH	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Use and disclosure of information:</b>									
• confidentiality/ non-disclosure	s.9(m)	s.13(6), cl.2.1	-	-	-	ss.6(c),57(g), cl.15(1)	s.9(7)	-	-
• not to obtain improper advantage	s.9(l)	s.13(10)	-	-	-	-	s.9(11)	-	-
• not make improper use of	-	-	-	-	-	s.6(c)	s.9(11)	-	s.9(b)?
<b>Use of property/resources:</b>									
• use efficiently & responsibly	-	s.13(8)	-	cl.4(c)	s.25(b), PS Act	ss.4(d),6(b)	-	-	s.7(f)
• avoidance of extravagance or waste	s.9(p)	-	-	cl.4(c)	s.11	-	-	-	-
• not to obtain improper advantage	-	-	-	cl.4(d)	-	-	s.9(11)	-	-
• not make improper use of/ use in a proper manner	s.9(o)	s.13(8)	-	-	ss.9(2)(a), 11, PSE Act s.23(h), PS Act	s.57(e)	s.9(9), (11)	-	s.9(b)
<b>Use of position/powers:</b>									
• not to obtain improper advantage	s.9(k)	s.13(10)	-	cl.4(d)	s.9(2)(a), PSE Act	-	s.9(11)	-	-

# Jurisdiction-wide code of conduct

**“Every other Australian jurisdiction has one – but not NSW”!**

# 'THE STATE OF INTEGRITY'!

# CONCLUSIONS

- ‘ethics’ involves a mental element [a very personal and subjective view]
- often no clearly ‘right’ answer
- people can be quite selective in the application of ethical principles
- from an implementation / enforcement perspective focus on outcomes rather than causes
- attempts to improve standards of conduct need to focus on the full range of conduct

# CONCLUSIONS (cont'd)

- a focus on standards and expectations will only assist those who wish to act ethically (or to not get into trouble)!
- an adequately resourced and comprehensive approach is required focusing on:
  - standard setting
  - expectation setting
  - prevention
  - enforcement
  - deterrence

# CONCLUSIONS (cont'd)

Foundation stones missing in NSW:

- legislated statements of values and standards of behaviour
- a jurisdiction-wide code of conduct
- an independent agency with statutory responsibilities (and the necessary resources) to establish and promote appropriate standards of conduct